

3. Is claimant entitled to unauthorized medical expense, payment of past medical expenses, and future medical care?
4. What is claimant's average weekly wage?
5. Is claimant entitled to temporary total disability compensation?
6. Is respondent entitled to a credit for preexisting disability pursuant to K.S.A. 44-501(c)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds claimant did give timely notice and the case should be remanded to the Administrative Law Judge for decision on the remaining issues.

Findings of Fact

1. Claimant worked for respondent from March 1992 to July 1996. Before she began working for respondent, claimant had problems with low back pain, hip pain, and other symptoms from fibromyalgia. The fibromyalgia had been diagnosed approximately two years before she started work for Parkview. Claimant disclosed this condition on the application for employment with respondent and her supervisor, Pamela Isaac, was aware claimant suffered from fibromyalgia.
2. During the course of her employment with respondent, claimant advised her supervisor, Ms. Isaac, on numerous occasions that her back was hurting her and that lifting at work contributed to her back problems. On the last day she worked for respondent, July 30, 1996, she told Ms. Isaac that her back was bothering her, that lifting was bothering her, that it was hard to sit or walk, and that she was in a lot of pain.
3. Claimant took a vacation beginning July 4, 1996, and returned July 30, 1996. During the vacation, claimant traveled to Wales and while there did a lot of walking. The walking caused increase in her back pain and also increased the hip and leg pain. When she returned, claimant worked one shift, the shift on July 30, 1996, and she has not worked for respondent since.
4. Claimant went on her own to Dr. Stanley D. Hornbaker who in turn referred her to Dr. Edward N. Letourneau and claimant was ultimately referred to Dr. K. N. Arjunan. Dr. Arjunan ordered an MRI and, based on the results, did surgery for a herniated disc at L5-S1 on August 15, 1996. Claimant developed a dural leak which was surgically repaired September 24, 1996.
5. Ms. Isaac testified she knew claimant had problems with physical work and knew it was getting worse. The swelling and pain were getting worse so Ms. Isaac advised claimant she should get further testing. Ms. Isaac was concerned that the fibromyalgia was a

precursor to multiple sclerosis. Ms. Isaac noted that the condition seemed to worsen during the six months before claimant went on her vacation to Wales. On the other hand, Ms. Isaac testified claimant did not specifically mention that the work was making her condition worse and did not specifically mention her back. Ms. Isaac assumed claimant's problems were from the fibromyalgia.

Conclusions of Law

1. K.S.A. 44-520, which is titled "Notice of injury" states that an employee must give "notice of the accident" within ten days after the date of accident. This requirement is waived if respondent has actual knowledge of the accident. In cases involving an alleged repetitive trauma injury, the Board construes this notice requirement as a requirement that claimant provide information indicating the work is causing injury.
2. The Board finds that claimant did give notice to respondent that her work was causing injury. It appears respondent did not know the nature of the injury and, in fact, misconstrued the type of injury involved but did have reason to know the work was causing injury or aggravation. Claimant notified respondent of the injury.
3. The notice was timely. The date of accident would be the last date worked. *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).
4. The case should be remanded for determination of all remaining issues.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on November 25, 1998, should be, and the same is hereby, reversed and the case remanded for determination of the remaining issues.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, KS
 Gary R. Terrill, Overland Park, KS
 Brad E. Avery, Administrative Law Judge
 Philip S. Harness, Director